

Special Civil Application No 4 of 1996

Date of decision: 06th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

KIRITKUMAR GANESHBHAI CHAUDHARYAI

vs

MC VAIDYA

Appearance:

Shri B.S. PATEL, Advocate, for the Petitioner.

Shri D.N.PATEL, Assistant Government Pleader, for Respondents Nos.1 and 43.

Shri MEHUL VAKHARIA, Advocate, for Respondents Nos.2 to 42.

Coram : MR.JUSTICE A.N.DIVECHA
(06th February 1996)

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned Assistant Government Pleader Shri D.N.Patel for Respondents Nos.1 and 43 and by learned Advocate Shri Mehul Vakharia for Respondents Nos.2 to 42. By consent of the learned Lawyers appearing for the parties, this petition is taken up for its hearing and disposal

today itself.

2. The order passed by the Deputy Secretary (Appeals), Revenue Department at Ahmedabad (Respondent No.1 herein) on 15th November 1995 (a copy of which is at Annexure-A to this petition) is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 set aside the order passed by the Collector of Mehsana (Respondent No.43 herein) on 19th April 1993. By his order passed on 19th April 1993, respondent No.43 directed resumption of 15 acres of land from survey No.190 (part) situated at village Lachhadi under section 98 of the Gujarat Panchayats Act, 1961 and directed the Deputy Collector to dispose it of according to law. Its copy is at Annexure-D to this petition.

3. The grievance of the petitioner is that, pursuant to the order at Annexure-D to this petition, the Deputy Collector granted the land in question to the petitioner by his order passed on 3rd September 1994 on certain terms and conditions. Its copy is at Annexure-F to this petition. Learned Advocate Shri Patel for the petitioner informs me that the order at Annexure-F to this petition has been carried in appeal before Respondent No.43 by and on behalf of respondents Nos.2 to 42 and yet the petitioner was not made a party by them in their revisional application culminating into the impugned order at Annexure-A to this petition. Learned Advocate Shri Vakharia for respondents Nos.2 to 42 has not been able to dispute this position.

4. I think the grievance voiced by learned Advocate Shri B.S.Patel for the petitioner to the effect that he ought to have been heard before the impugned order at Annexure-A to this petition came to be passed deserves to be accepted for the simple reason that, pursuant to the impugned order at Annexure-D to this petition, the petitioner came to be allotted the land in question by the order at Annexure-F to this petition and he was therefore an interested party. Respondents Nos.2 to 42 ought to have joined him as a party - respondent in the revisional application culminating into the order at Annexure-A to this petition. In that view of the matter, the impugned order at Annexure-A to this petition cannot be sustained in law as violative of the rule of *audi alteram partem*.

5. Since the petitioner is not made a party to the revisional application culminating into the impugned order at Annexure-A to this petition, the petitioner is directed to apply to respondent No.1 for being impleaded as a party to the proceeding as the matter is required to be remanded to respondent No.1 after setting aside his order at Annexure-A to this petition. The petitioner should make such application on or before 29th February 1996 with a copy to the authorised

representative of respondents Nos.2 to 42. Since the petitioner is an interested party, respondent No.1 would certainly implead him as a party to the revisional proceeding in question. It would be desirable on the part of respondent No.1 to dispose of the revisional proceeding as expeditiously as possible preferably by 30th April 1996.

5. In the result, this petition is accepted. The order passed by respondent No.1 on 15th November 1995 at Annexure-A to this petition is quashed and set aside. The matter is remanded to respondent No.1 or his successor in office as the revisional authority for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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